

§ 58-10-90. Use and operation of protected cells.

(a) The protected cell assets of a protected cell may not be charged with liabilities arising out of any other business the protected cell company may conduct. All contracts or other documentation reflecting protected cell liabilities shall clearly indicate that only the protected cell assets are available for the satisfaction of those protected cell liabilities.

(b) The income, gains and losses, realized or unrealized, from protected cell assets and protected cell liabilities must be credited to or charged against the protected cell without regard to other income, gains or losses of the protected cell company, including income, gains or losses of other protected cells. Amounts attributed to any protected cell and accumulations on the attributed amounts may be invested and reinvested without regard to any requirements or limitations of this Chapter and the investments in a protected cell or cells may not be taken into account in applying the investment limitations otherwise applicable to the investments of the protected cell company.

(c) Assets attributed to a protected cell must be valued at their fair value on the date of valuation.

(d) A protected cell company, with respect to any of its protected cells, shall engage in fully funded indemnity triggered insurance securitization to support in full the protected cell exposures attributable to that protected cell. A protected cell company insurance securitization that is nonindemnity triggered shall qualify as an insurance securitization under the terms of this Chapter only after the Commissioner adopts rules addressing the methods of funding of the portion of this risk that is not indemnity based and addressing accounting, disclosure, risk-based capital treatment, and assessing risks associated with the securitizations. A protected cell company insurance securitization that is not fully funded, whether indemnity triggered or nonindemnity triggered, is prohibited. Protected cell assets may be used to pay interest or other consideration on any outstanding debt or other obligation attributable to that protected cell, and nothing in this subsection may be construed or interpreted to prevent a protected cell company from entering into a swap agreement or other transaction for the account of the protected cell that has the effect of guaranteeing interest or other consideration.

(e) In all protected cell company insurance securitizations, the contracts or other documentation effecting the transaction shall contain provisions identifying the protected cell to which the transaction will be attributed. In addition, the contracts or other documentation shall clearly disclose that the assets of that protected cell, and only those assets, are available to pay the obligations of that protected cell. Notwithstanding the provisions of this subsection and subject to the provisions of this Chapter and any other applicable law or rule, the failure to include such language in the contracts or other documentation may not be used as the sole basis by creditors, reinsurers, or other claimants to circumvent the provisions of this Part.

(f) A protected cell company shall only be authorized to attribute to a protected cell account the insurance obligations relating to the protected cell company's general account. Under no circumstances may a protected cell be authorized to issue insurance or reinsurance contracts directly to policyholders or reinsureds or have any obligation to the policyholders or reinsureds of the protected cell company's general account.

(g) At the cessation of business of a protected cell in accordance with the plan approved by the Commissioner, the protected cell company voluntarily shall close out the protected cell account. (2001-223, s. 25.)